



[Issue](#) | [Background](#) | [Findings](#) | [Conclusions](#) | [Recommendations](#) | [Responses](#) | [Attachments](#)

Summary of Fiscal Irresponsibility of the San Mateo Union High School District Board of Trustees

Financial Operations Need Immediate Attention from Top to Bottom

Issues

How could the San Mateo Union High School District Board of Trustees 1) approve payment of back overtime to a classified employee without the required supporting documentation, 2) allow material inaccuracies and false certifications in grant applications, 3) permit improper fund transfers from the District Building Fund into the District General Fund, and 4) approve financing with excessive interest and fees?

What policies and procedures should be in place to ensure that such questionable actions will not recur?

Summary

The San Mateo Union High School District Board of Trustees neglected its duties, was fiscally irresponsible, and allowed hundreds of thousands of dollars of public money to be squandered that could have, for example, paid the annual salaries of the 16 teachers and 36 classified staff that the District had to lay off in the Fall of 2006. Ultimately the Board of Trustees' abrogation of their fiscal oversight responsibilities could jeopardize the District's academic programs, including seventh period classes and the middle college program.

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) was motivated to investigate the San Mateo Union High School District (SMUHSD or District) by media reports of the District's financial difficulties. The Grand Jury has chronicled these

difficulties in two prior reports, “*Problems in Fiscal Management at San Mateo Union High School District*” and “*San Mateo Union High School District Construction Contracting Procedures*.” The focus of the Grand Jury investigation then shifted to questionable financial practices that were uncovered during the earlier investigations and led to this third report, which documents findings from investigations of the four following topics:

1. Overtime and Contracts Documentation: Was a significant amount of overtime authorized for, recorded by or timely paid to a former employee? Was a subsequent “consulting agreement” with the employee properly approved by the District and was any work performed for the monies paid?
2. Potential Office of Public School Construction Penalties: Did the District’s State of California grant applications contain materially inaccurate information and false certifications? What possible penalties could result?
3. Accounting and Authorization Issues: Did the District inappropriately transfer funds from the Building Fund to the General Fund and were the financial statement disclosures of contingent liabilities adequate?
4. Certificates of Participation: Were proper practices followed in the issuance of Certificates of Participation and were the District’s interests properly protected in the transactions?

The Grand Jury has concluded that the District has failed to follow appropriate financial controls and procedures in a series of significant transactions. As a result, the District has prepared and distributed misleading financial statements, incurred unnecessary expenses, engaged in questionable transactions and potentially exposed the District to substantial fines and penalties. These practices took place during a period when the District’s finances were troubled and during which extraordinary care should have been exercised by the Board of Trustees and Superintendent. The Grand Jury has also concluded that additional investigation of District finances is appropriate.

The Grand Jury’s report concludes with 22 specific recommendations to address four specific problems. These recommendations, taken collectively, require that the District immediately make positive and significant changes in the District’s financial controls and procedures. These 22 recommendations supplement the 14 recommendations in the prior two 2006-2007 Grand Jury reports concerning the San Mateo Union High School District.



Fiscal Irresponsibility of the San Mateo Union High School District Board of Trustees

Financial Operations Need Immediate Attention from Top to Bottom

Issues

How could the San Mateo Union High School District Board of Trustees 1) approve payment of back overtime to a classified employee without the required supporting documentation, 2) allow material inaccuracies and false certifications in grant applications, 3) permit improper fund transfers from the District Building Fund into the District General Fund, and 4) approve financing with excessive interest and fees?

What policies and procedures should be in place to ensure that such questionable actions will not recur?

Introduction

In this report you will read how the San Mateo Union High School District (SMUHSD or District) Board of Trustees neglected its duties, was fiscally irresponsible, and squandered hundreds of thousands of dollars of public money. The misspent money could have paid the annual salaries of the 12 teachers and 36 classified staff that the District had to lay off in the Fall of 2006. Ultimately, the Board of Trustees' abrogation of its fiscal oversight responsibilities may jeopardize the District's academic programs, including seventh period classes and the middle college program.

The California School Boards Association states¹ that an effective Board will “*adopt a fiscally responsible budget based on the district's vision and goals, and regularly*

¹ <http://www.csba.org/pgs/boards.cfm>

monitor the fiscal health of the district.” The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) is outraged that the San Mateo Union High School District Board of Trustees neglected these responsibilities and saddened by the effects this neglect has had, and will continue to have, on the students of the District.

There are important lessons to be learned from the failures of the SMUHSD Board of Trustees, so the Grand Jury is sending this report to all school districts in San Mateo County.

Background

The Grand Jury was originally motivated to investigate the SMUHSD by media reports of the District’s financial difficulties. The Grand Jury has chronicled these investigations in two prior reports, “*Problems in Fiscal Management at San Mateo Union High School District*” and “*San Mateo Union High School District Construction Contracting Procedures.*” These reports can be found at <http://www.sanmateocourt.org/grandjury>. The focus of the Grand Jury investigation then shifted to concerns about the District that were uncovered during these initial investigations.

The SMUHSD serves 8,300 students in seven high schools and six communities. It is a Basic Aid district and as such, it receives most of its revenue from property taxes. The District has a monthly payroll budget of approximately \$6.2 million. In recent years there has been much capital project financing. In 2000 the voters passed Measure D and in 2006 they passed Measure M. The capital project financing from these two measures, State grants and other debt amount to more than one-half billion dollars, as shown in the table below.

Recent Construction Funding SMUHSD	
Measure D - 2000	\$137.5 million
Measure M - 2006	298.0 million
COP - Consolidated March 2007	73.0 million
State Grants (OPSC)	<u>46.5 million</u>
Total	<u><u>\$555.0 million</u></u>

The remainder of this report is long and technical, and includes supporting material presented in seven appendices. To help the reader navigate its complexities, the report begins with a brief Overview.

Overview

This Grand Jury report describes the following four investigations:

1. Documentation for an overtime and consulting contract

Prior to his January 2004 retirement, the previous Superintendent of SMUHSD negotiated a consulting contract for his Executive Assistant that was to become effective after the Executive Assistant retired. The Executive Assistant subsequently became and now is a consultant to the District. Additionally, the previous Superintendent approved payment of back overtime for his Executive Assistant. This Grand Jury report reviews the history of the arrangement and the absence of supporting documentation for both the consulting agreement and the overtime payment.

2. Material inaccuracies and false certifications to the State

The State of California makes grants to local school districts from the sale of State General Obligation Bonds. To receive the State funding, a district official must certify to the State Office of Public School Construction (OPSC) that the school district has entered into binding contracts for at least 50% of the construction as shown in the plans previously approved for funding. This rule assures that State money will be given to projects that are well under way, and prevents a school district from 'banking' the funds, thereby depriving other districts of needed funds.

On April 26, 2001, SMUHSD's former business officer made such a certification that the District was in binding contracts for 50% of the approved work. However, later OPSC audits revealed that contracts totaling the required 50% had not been executed and thus the District had not met the appropriate criteria for the State funds released to the District for Measure D projects.

These inaccuracies involve \$23,769,809 of State bond money allocated for work at Burlingame, Mills, Hillsdale and Aragon High Schools, and expose the District to severe penalties, including return of the money, interest on the funds issued or fines which could exceed \$2.8 million. These penalties could be assessed for as long as it takes the District to become compliant - up to three years for some projects.

This Grand Jury report provides a detailed view of how this situation developed and what might be done in the future to prevent a recurrence.

3. Questionable accounting and authorization issues concerning the transfer of funds

The following three questionable fund transfer issues were investigated:

Accounting for Litigation Settlement. Subsequent to its completion, the San Mateo High School gymnasium suffered water damage during a winter storm. On January 20, 2006, a \$1 million settlement for water damage repairs was received and recorded in the District's Building Fund. On February 13, 2006, \$1 million was transferred from the

Building Fund to the General Fund as an interfund loan to increase the General Fund reserve. Interfund loans are proper as long as they are paid back, but there is no evidence that the \$1 million loan was paid back to the Building Fund.

Accounting for Interfund Transfers from the Building Fund. A Building Fund represents the proceeds from the sale of bonds and may not be used for any purposes other than those for which the bonds were issued. In addition to the \$1 million loan transfer from the Building Fund to the General Fund noted above, there were three other transfers, for \$350,000, for \$500,000, and for \$500,000, all labeled as indirect costs. However, such overhead costs must be for actual expenditures and can only be paid out of the Building Fund if such payments are approved by the funding source, Measure D. This Measure is silent regarding overhead costs. Even if the transfers represented allowable overhead expenditures, those expenditures would have to be actual payments. The round dollar amounts above suggest that the three transfers may not represent actual payments.

Additionally, the Grand Jury was told that such transfers should be authorized by the Board of Trustees, but those Trustees queried were unaware of any major interfund transfers. When asked if the transfers were properly authorized, District staff and former District staff stated that the transfers were not specifically authorized, but appeared as line-items in the budget approved by the Board of Trustees. The Grand Jury notes that a Board member would be unlikely to notice such transfers in a large, complicated annual budget.

Accounting for Contingencies. The need for financial statement transparency is becoming an increasingly important topic. In the post-Enron world, reporting transparency is recognized as critical. Not only companies, but also government agencies that fall short of the transparency benchmark risk significant damage to their credibility. According to the Government Accounting Standards Board, financial reporting should assist in fulfilling government's duty to be publicly accountable. Financial statements should be useful tools that help assess a governmental entity's ability to meet its obligations as they become due. The necessary transparency is accomplished through financial disclosures in the financial statement that clearly indicate the legal or contractual restrictions on resources and risks of potential loss of resources. Such disclosures have been missing in recent SMUHSD audits.

4. Improper activities in connection with Certificates of Participation (COPs)

COPs are a complex form of debt using a lease arrangement. COPs are an attractive method of financing for public bodies such as school districts because they can provide funding for capital projects and do not require voter approval. A COP is analogous to a homeowner loan. For an individual the asset securing the loan is the home; for a school district the collateral could be a part of the school's real estate. The COP loan is funded by banks or individuals who receive tax-exempt interest. The California School Boards Association (CSBA) assists a school district in COP financing, and receives lease payments from the school district. In addition to acting as a lessor, the CSBA assembles a finance team, comprised of a bond counsel, underwriter, financial trustee and various legal counsels. The SMUHSD derives the debt payments from its share of developer fees

and funds from redevelopment agencies. If these funds are insufficient to meet the payment, money must be drawn from the district's general fund.

The Grand Jury investigated questionable actions concerning the details of arranging COPs for the SMUHSD and the interest and fee payments related to the COPs.

Investigations

Members of the Grand Jury conducted 35 interviews with District staff, members of the District Board of Trustees, staff members of the San Mateo County Assessor's Office, the San Mateo County Controller's Office, other school district officials, the San Mateo County Office of Education, citizens, and other education, auditing and financial professionals. Three subpoenas were issued on the Grand Jury's behalf: two for witness appearance and one for documents. One subpoenaed witness refused to answer questions, exercising the constitutional right against self-incrimination.

Report Organization

The remaining parts of this report describe four interrelated investigations:

- Part 1: Overtime and Contracts Documentation
- Part 2: Office of Public School Construction (OPSC) penalties
- Part 3: Accounting and authorization issues
- Part 4: Certificates of Participation (COPs)

Findings and Conclusions are given separately for each part, but all recommendations are consolidated in the final section of this report.

Part 1: Overtime and Contracts Documentation

Background

The previous Superintendent of the SMUHSD retired in January 2004. Prior to his retirement, he negotiated a consulting contract for his Executive Assistant that was to become effective after the Executive Assistant's retirement. The Executive Assistant subsequently became and now is a District consultant. The Superintendent also approved payment of previously unreimbursed overtime for his Executive Assistant.

The original consulting agreement with the Executive Assistant was entered into on January 12, 2004, and was to begin on August 1, 2004 and run through July 31, 2007. It provided for 390 hours of consulting service to be compensated at \$117.69 per hour or \$1,275 per month (\$15,300 per year). This agreement was recommended by the former Superintendent and approved by the Board of Trustees on November 13, 2003. The

monthly consulting fee approximates the salary difference between the new incoming Executive Assistant's salary and the outgoing Executive Assistant's salary.

On May 25, 2005, both the Superintendent at that time and the consultant signed an amendment to the original Consulting Agreement extending the contract through May 2008 at a total cost of \$49,000 for these three years.

On March 9, 2006, the Board of Trustees amended the agreement to extend the term of service through June 2008 and increase the consulting fee to \$25,000 per year to compensate for the "increased scope and responsibility of the consulting services [he/she] provides the District. This amendment will compensate services provided and not hours." The agreement is silent on defining what constitutes the additional scope and responsibilities of the consulting services.

Prior to retirement, the Executive Assistant requested and was paid \$12,376 in overtime. The Superintendent who retired in 2004 recommended a payment of \$88,403 to cover back overtime not previously requested. This request was approved by the Board of Trustees in closed session on November 3, 2003.

Consulting Agreement Findings

- The original consulting agreement was entered into on January 12, 2004, approximately six months before the District formally accepted the Executive Assistant's retirement request on July 31, 2004. It appears that the consulting agreement was negotiated while the Executive Assistant worked for the District.
- The original consulting agreement states, "The parties hereby acknowledge that the manner, means and methods used by [name withheld] to achieve the desired results for the District lies within [name withheld] sole discretion and control." This agreement does not call for any specific accomplishment by the consultant.
- A knowledgeable witness familiar with the policies of the District told the Grand Jury that no policies governing consulting agreements could be found.

Back Overtime Findings

- The former Superintendent had recommended that the consultant be paid back overtime totaling \$88,403. Documents obtained by the Grand Jury show a general record of the overtime which is summarized in the Table below:

**Worksheet Obtained by Grand Jury Showing
Calculation of Overtime Earned by Consultant**

Overtime	Salary	OT Rate	Wks/Yr	Hrs./Wk	Cost shown on Worksheet (1)
2000-2001	\$70,990	\$57.72	42	13	\$31,513.00
2001-2002	\$78,226	\$63.60	40	13	\$33,071.00
2002-2003	\$83,526	\$67.91	41	13	\$36,195.00
Total Overtime Earned					\$100,779.00
Overtime Previously Paid					\$12,376.00
Overtime Still Owed (1)					\$88,403.00

(1) Recalculation made by Grand Jury shows amount to be calculated as \$88,407.15

- The Grand Jury learned that the attorney for the District told the Board of Trustees that they had to pay back overtime provided that it could be adequately and thoroughly documented.
- Adequate and thorough documentation for overtime should include contemporaneous daily records of hours worked. Numerous requests by the Grand Jury yielded no contemporaneous daily records of the Executive Assistant's overtime.
- The Board of Trustees met in closed session and approved the Executive Assistant's overtime request. The published minutes of the November 13, 2003 Board of Trustees meeting included the following statement regarding the Board's closed session, "President [name withheld] declared a recess so that members of the Board of Trustees could meet in closed session to hear pupil personnel matters and discuss confidential employee negotiations."
- Requests for back overtime are unusual. According to the most recent California School Employees Association (CSEA) contract, "Prior to being worked, all overtime shall be authorized by the immediate supervisor. Overtime claims for work not pre-approved may be denied. Payment shall be for the actual number of hours worked in not less than one-quarter hour increments."

Part 2: Office of Public School Construction Penalties

Background

In 2000 voters approved the \$137,500,000 Measure D bond issue to repair and rehabilitate SMUHSD school facilities to meet current health, safety and instructional standards. The repair and rehabilitation included replacing deteriorated plumbing, inadequate heating, ventilation, roofs, windows and lighting, and refurbishing bathrooms, safety systems, classrooms, and computer and science laboratories. Measure D projects were funded in part by grants from the State of California with the proceeds from the sale of State general obligation bonds.

Investigation of the District by the Office of Public School Construction (OPSC)

The State of California makes grants to local school districts funded by the sale of State general obligation bonds. On April 26, 2001, the Chief Business Officer (CBO) of SMUHSD certified, by signing State Allocations Board (SAB) 50-05 forms, that the District had met the grant criteria for \$23,769,809 in State funds for Measure D projects. These funds were to be used for work at Burlingame, Mills, Hillsdale and Aragon High Schools as outlined in the table below. Investigation by the OPSC has revealed material inaccuracies due to false certifications on these SAB 50-05 forms.²

San Mateo Union High School District Proposition 1A Funding for Modernization				
	Application Number	SAB Apportionments from 12/16/98 through 10/23/02 (see note 4 below)	Date Funded	Date Release Signed
Burlingame High School	57-6904700-01	\$62,147.00	12/8/1999	4/26/2001
Burlingame High School	57-6904700-01	\$5,002,512.00	7/5/2000	4/26/2001
Mills High School	57-6904700-03	\$880,096.00	12/8/1999	4/26/2001
Mills High School	57-6904700-03	\$5,437,841.00	7/5/2000	4/26/2001
Hillsdale High School	57-6904700-04	\$743,453.00	12/8/1999	4/26/2001
Hillsdale High School	57-6904700-04	\$4,658,529.00	7/5/2000	4/26/2001
Aragon High School	57-6904700-06	\$906,421.00	12/8/1999	4/26/2001
Aragon High School	57-6904700-06	\$5,663,923.00	7/5/2000	4/26/2001
Total Modernization Funding		\$23,354,922.00		

² Interview of witness, March 16, 2007

Material Inaccuracies Due to False Certifications

Many forms are required during the application and award process for a State grant. Among these forms, SAB 50-05 initiates the funds release of the State apportionment. In order to receive the State funding, a district official must certify that various requirements as listed on the Form SAB 50-05 have been met. One such requirement is that the school district has contracted for at least 50% of the construction as shown in the plans previously approved for funding. On April 26, 2001, the SMUHSD CBO made such a certification on a number of the Fund Release Authorization forms SAB 50-05. On the form the District CBO stated that “The district certifies it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project.” OPSC audits revealed that the District had not, in fact, met this requirement.³

Consequences of Material Inaccuracies Due to False Certifications

SMUHSD’s inaccuracies affect \$23,769,809 of State bond money allocated for work at Burlingame, Mills, Hillsdale and Aragon High Schools. State funds are apportioned in the order requests are received, so if SMUHSD received its apportionment before it was entitled, other districts applying later could be prejudiced.⁴ In order to discourage such attempts to rush to the front of the line, the SAB can assess severe penalties, including forfeiture of the money, interest on the funds apportioned, or fines, which could be in excess of \$2.8 million in the case of SMUHSD.⁵ Penalties could be assessed for as long as it takes the District to become compliant, which could be up to three years for some projects.

The SAB will meet in June or July 2007 to consider what penalties may be assessed against the SMUHSD. If penalties are assessed, the District will be charged \$100 per hour for the OPSC to audit all the District claims for apportioned funds and lose the privilege of self-certifying future requests for funds.⁶ Furthermore, District applications for Proposition 55 bond funds made in August 2006 and January 2007 (totaling \$2,826,604) will be “scrutinized much more stringently” if the SAB finds the District did, indeed, make false certifications.⁷

³ OPSC Letter to SMUHSD Superintendent, March 23, 2007

⁴ For a complete breakdown of the sources of available funding see <http://www.bondaccountability.opsc.dgs.ca.gov/Bondac/general.asp>

⁵ OPSC document, March 6, 2007

⁶ Interview of witness, May 2, 2007

⁷ Ibid.

Findings

- On April 26, 2001, the SMUHSD submitted State Allocation Board SAB 50-05 forms requesting State bond funds totaling \$23,769,809 for Burlingame, Mills, Hillsdale and Aragon High Schools; the forms had material inaccuracies due to false certification.
- The following are potential consequences of the false certification that may be levied by the SAB in June or July 2007:
 - Forfeiture of the State funds
 - Penalties exceeding \$2.8 million
 - \$100 hourly charges for reexamining previous applications
 - Loss of the right to self-certify future applications

Part 3: Accounting and Authorization Issues

The Grand Jury's report, "Problems in Fiscal Management at the San Mateo Union High School District"⁸ (Fiscal Management Report) identified the failure to disclose contingent liabilities in the District's June 30, 2006 audited financial statements arising from pending property tax appeals. Other accounting issues became evident to the Grand Jury while it was preparing its Fiscal Management Report. Some of these issues relate to General Fund solvency and the State-mandated requirement to maintain a three percent reserve. To a large extent, the three percent reserve refers to the unrestricted General Fund balance as a percentage of total expenditures for the District. By increasing the ending cash balance in the General Fund, the District's percentage reserve is increased.⁹

The Grand Jury has noted that the District's percentage reserve has generally been deteriorating since 2002. The bolded columns in the following table show the sharp decline in the General Fund reserves and percentage reserves.

⁸ <http://www.sanmateocourt.org/grandjury/2006/reports/SMUHSDFinal.pdf>

⁹ Calculation of the percentage reserve is as follows:

<p><u>Percentage Reserve Calculation</u></p> <p>[The ending unrestricted balances of the General Fund and Special Reserve Fund]</p> <p style="text-align: center;">÷</p> <p>[Total General Fund Expenditures, Transfers-Out and Uses]</p> <p>The quotient is expressed as a percentage.</p>

**Calculation of Percentage Reserve for SMUHSD
For Fiscal Years Ended June 30, 2002 through 2007 ***

Fiscal Year ended June 30th	Source of Information	Total Reserves	Total Expenditures	Transfers-Out	Total Expenditures, Transfers-out Uses ***	Total Reserves as a percentage of Total Expenditures, Transfers-out and Uses
2002	Unaudited Actual	7,926,291	75,222,094	687,974	75,910,068	10.44%
2003	Unaudited Actual	6,037,573	78,658,690	628,000	79,286,690	7.61%
2004	Unaudited Actual	6,258,439	76,831,492	630,000	77,461,492	8.08%
2005	Unaudited Actual	4,619,383	82,369,181	724,214	83,093,395	5.56%
2006	Unaudited Actual	2,571,580	87,594,601	745,890	88,340,491	2.91% **
2007	Adopted Budget	217,838	87,076,575	534,000	87,610,575	0.25% **
2007	First Interim	215,391	90,505,429	1,230,000	91,735,429	0.23% **

* Information obtained from the San Mateo County Office of Education

** Below the 3% minimum mandated by the State.

*** The "Uses" were zero

Accounting for Litigation Settlement

Subsequent to its completion, the San Mateo High School gymnasium suffered water damage during a winter storm. As reported by the local press at the time – “Its \$7 million price tag [the original price of renovating the gymnasium] could not prevent the torrential rain from seeping into the new San Mateo High School Community Gymnasium. The leaks, which are between the walls and the ceiling, were discovered after last month’s hard wind-driven rain. Tom Mohr, Superintendent for the San Mateo Union High School District, called the discovery a blessing because it happened sooner rather than later and the gym is still under warranty.”¹⁰

On January 20, 2006, a \$1 million settlement for repair of the water damage was received and recorded in the District’s Building Fund. On February 13, 2006, the former CBO (at that time serving as a consultant to the District) directed District staff to transfer the \$1 million from the Building Fund to the General Fund as an interfund loan to help meet the General Fund reserve requirement.

Interfund loans are proper if they are paid back in a timely manner. The applicable rule requires that if the borrowing occurred more than 120 days before the June 30th end of the fiscal year, the loan must be repaid by the end of that fiscal year. This interfund transfer occurred over 135 days prior to the fiscal year end, but there is no evidence that the \$1 million loan was ever repaid to the Building Fund.

¹⁰ San Mateo Daily Journal, January 11, 2003

http://www.smdailyjournal.com/article_preview.php?id=19604&eddate=01/11/2003

Accounting for Interfund Transfers from the Building Fund

School district accounting is standardized in the *California School Accounting Manual*¹¹. According to Jack O'Connell, State Superintendent of Public Instruction, "Education Code Section 41010 requires that school districts use systems to record their financial affairs that comply with the definitions, instructions, and procedures published in this manual."¹² The Building Fund, as addressed in this manual, "exists primarily to account separately the proceeds from the sale of bonds (Education Code Section 15146) and may not be used for any purposes other than those for which the bonds were issued. Other authorized revenues to the Building Fund (Fund 21) are proceeds from the sale or lease-with-option-to-purchase of real property (Education Code Section 17462) and revenue from rentals and leases of real property specifically authorized for deposit into the fund by the governing board (Education Code Section 41003)."¹³

The table below sets forth three additional transfers from the Building Fund to the General Fund:

Date of Transfer	Amount of Transfer
February 18, 2004	\$350,000
April 14, 2005	\$500,000
May 19, 2006	\$500,000

The yearly budgets commencing with fiscal year 2003-2004 refer to these transfers as "INDIRECT COSTS-CAPITAL PRGMS [sic]."¹⁴ Indirect costs may refer to overhead costs paid from the General Fund to be reimbursed from the Building Fund, but such overhead costs must be for actual expenditures. They can be paid from the Building Fund only if they are approved by the funding source. The funding source, Measure D, is silent regarding overhead reimbursement. Even if reimbursement of overhead expenditures was allowed, expenditures must be supported by proof of payment. The transfers listed in the above table are all large round numbers, which raises the suspicion that the three transfers above do not represent actual payments.

A knowledgeable witness told the Grand Jury that the interfund transfers described above should be authorized by the Board of Trustees. Those Trustees queried by the Grand Jury were not aware of any major interfund transfers. When asked if the transfers were properly authorized, current and former District staff stated that the transfers were not specifically authorized, but appeared as line-items in the budget that was approved by the Board of Trustees.

The Building Fund balance as of January 31, 2007, as shown on the "Board Approved Operating Budget" in the Second Interim report, was a negative \$6,499,513. Such a

¹¹ California School Accounting Manual, 2007 Edition, Prepared under the direction of the School Fiscal Services Division California Department of Education.

¹² *ibid.*, page xi.

¹³ *ibid.*, page 305-4.

¹⁴ Quoted from District budget documents

deficit balance occurs when expenditures and transfers-out exceed revenues and transfers-in.

Accounting for Contingencies

The need for financial statement transparency is becoming an increasingly important topic. “In the post-Enron world, reporting transparency is critical. A growing body of evidence indicates that companies that fall short of the transparency benchmark risk significant damage to management credibility.”¹⁵

According to the Government Accounting Standards Board, “Financial reporting should assist in fulfilling government’s duty to be publicly accountable.”¹⁶ Financial statements should be useful tools to help in assessing to what degree services can be provided by the governmental entity, as well as its ability to meet its obligations as they become due. This is accomplished through financial disclosure by “[d]isclosing legal or contractual restrictions on resources and the risk of potential loss of resources.”¹⁷

For the fiscal year ended June 30, 2006, the District received \$1,643,848 less in property tax revenue than expected, but the risk of this reduction was not mentioned in the financial statement.¹⁸ The District’s probable liability to the OPSC, previously discussed in this report, could amount to fines or penalties of several million dollars.

The following note is the only mention of contingent liabilities contained in the June 30, 2006 audited financial statements.

Note 21. Contingent Liabilities

The District is involved in major construction projects at most of the District’s school sites. The District is a party to various legal proceedings related to these projects which normally occur in major construction contracts. These legal proceedings are not likely to have a material adverse impact on the affected funds of the District. The District has significant resources available in the Bond Construction Funds to cover any losses for potential negative outcomes of these lawsuits.¹

¹ San Mateo Union High School District Annual Financial Report, June 30, 2006, note 20, page 52.

¹⁵ PricewaterhouseCoopers, *Increased need for transparency and disclosure in financial statements. Corporate Social Responsibility (CSR) Reporting*,

<http://www.pwc.com/extweb/industry.nsf/docid/5c1943122720fe818525701300669d69>

<http://www.sanmateocourt.org/grandjury/2006/reports/SMUHSDFinal.pdf>

¹⁶ GASB Concepts Statement 1, *Objectives of Financial Reporting*, (1987)

¹⁷ Ibid.

¹⁸ <http://www.sanmateocourt.org/grandjury/2006/reports/SMUHSDFinal.pdf>

Professional accounting standards (Statement of Financial Accounting Standards No.5 – Accounting for Contingencies) require uncertainties of potential loss to be disclosed in audited financial statements. There was no disclosure of the potential for property tax refunds or the OPSC penalty liabilities in the audited financial statements for the fiscal years ending June 30, 2005 and 2006.

Findings

- The February 13, 2006 loan of \$1 million from the Building Fund to the General Fund was not ever repaid to the Building Fund as required by statute.
- Transfers from the Building Fund to the General Fund on February 18, 2004, April 14, 2005 and May 19, 2006 are not supported by receipts for expenditures and may be unauthorized under Measure D.
- Transfers from the Building Fund to the General Fund of February 18, 2004, April 14, 2005 and May 19, 2006 appear not to have been specifically authorized by the District Superintendent and Board of Trustees when the transfers occurred; they only appear as line items in the District’s annual budget.
- Financial statement disclosures of contingent liabilities for the year ended June 30, 2006 are inadequate.

Part 4: Certificates of Participation (COPs)

The Need for Capital Financing

By the 1990s, it was apparent that the District’s school facilities needed repair and rehabilitation. A study was initiated to assess the District’s physical plant requirements and in 1997 Steinberg Architects produced a *Facilities Needs and Assessment Study* which indicated that the District needed \$270 million (in 1997 dollars) to modernize its six high schools. Of this total, \$190 million was needed for critical health and safety issues as well as some modernization projects. In November 1998 and again in May 1999 bond measures to raise the \$190 million failed at the polls. Another attempt in November 2000 resulted in the passage of a smaller, \$137.5 million bond issue (Measure D).¹⁹

In addition to the \$137.5 million provided by Measure D, further funding came from State grants and from debt called “Certificates of Participation” (COPs). The State grants are administered by the OPSC. These grants, not including deferred maintenance

¹⁹ San Mateo Union High School District, *Revised Facilities Master Plan 2007-2012*, February 9, 2006

allocations, total over \$46.5 million. Exhibit 1 below gives details of the State grant allocations.

Exhibit 1
Office of Public School Construction
Total Allocations to the San Mateo Union High School District

Application No.	Amount	Date
50/69047-04-02	8,738,985	4/24/02
57/69047/00/01	62,147	12/8/99
57/69047/00/01	5,002,512	7/5/00
57/69047/00/02	6,041,923	7/5/00
57/69047/00/02	852,191	12/8/99
57/69047/00/03	880,096	12/8/99
57/69047/00/03	5,437,841	7/5/00
57/69047/00/04	743,453	12/8/99
57/69047/00/04	4,658,529	7/5/00
57/69047/00/05	4,102,402	7/5/00
57/69047/00/05	645,129	12/8/99
57/69047/00/06	906,421	12/8/99
57/69047/00/06	<u>5,663,923</u>	7/5/00
Subtotal	<u>43,735,552</u> ¹	
50/69047-01-001	1,403,869	1/24/07
50/69047-05-001	<u>1,422,735</u>	8/23/06
Subtotal	<u>2,826,604</u> ²	
Grand Total	<u><u>46,562,156</u></u>	

¹ **Office of Public School Construction, *All Project Apportionments from December 16, 1998 SAB to October 23, 2002***
<http://www.opsc.dgs.ca.gov/Default.htm>

² **Office of Public School Construction, *New Construction Projects out of Proposition 55 by District from April 28, 2004 SAB through January 25, 2008***

COPs are attractive to public entities such as school districts because capital projects can be financed without the voter approval required for bonds.²⁰ COPs are a complex form of debt wherein the lender becomes the owner or part-owner of the facility and the

²⁰ California School Boards Association (CSBA) "What We Do," <https://www.csba.org/fs/cops.htm>

borrowing government agency leases the facility from the lender. The lease payments are guaranteed and are used to pay interest and amortize principal. The COP loans are funded by banks or individuals and the interest payments received are tax-exempt. The California School Boards Association (CSBA) assists school districts with COP financing, receiving lease payments from the school district and remitting them to the lenders, typically through the use of a trust. In addition to collecting the payments, the CSBA assembles a finance team, comprised of bond counsel, underwriter, a financial trustee and legal counsel. When the COP is funded, CSBA assigns its rights under the COP to a financial trustee that holds the collateral assets for the benefit of the investors.

According to the CSBA, “The total amount of capital to fund each individual school district’s project is raised through the issuance of COPs, then the trustee funds each project under the terms of the lease and collects payments from each district.”²¹ See Appendix 1 for more detail.

Through 2006, the SMUHSD issued three COPs listed below totaling \$50 million:

COP#1	\$20 million issued in December 2005	Capital Improvement Program
COP#2	\$15 million issued in January 2006	Capital Improvement Program
COP#3	\$15 million issued in June 2006	Low Floater Private Placement Issue

At its March 8, 2007 meeting (see Appendix 2), the District Board of Trustees unanimously voted to refinance and consolidate its three existing COPs into a new, single, \$73 million COP and use the additional \$23 million of debt for Measure D projects.

Background of COPs #1 and #2

COP#1 and COP#2 (designated as the Capital Improvement Program and initially as a single debt) were approved in principle by the Board of Trustees on May 9, 2002 in an amount not to exceed 50% of some newly acquired Redevelopment Agency (RDA) funding, estimated to be \$60 million. On December 12, 2002, the Board approved issuance of COPs totaling \$30 million. The first funding of \$20 million, however, did not occur until December 2005.

According to a witness, the Board was advised on September 15, 2005 by the then current CBO that the proceeds to be received by the District under COP#1 would be only \$18 million because the trustee bank required a \$2 million (i.e., 10%) reserve. In addition, from the \$18 million in COP#1 proceeds, \$1 million was to be used to fund the Housing Loan Program for teachers. The CBO assured the Board that the District could afford to finance up to an additional \$14 million to meet the funding needs of the previously approved Capital Improvement Program because the CBO had been advised

²¹ Ibid.

by experts that the District would receive greater than projected RDA funding, which would provide a sufficient revenue stream for the additional debt. In apparent response to the advice of the CBO, in January 2006 the Board approved issuance of COP#2 in an amount not to exceed \$15 million, raising the total debt for the Capital Improvement Program to \$35 million.

Background of COP#3

By Spring 2006 it was evident that the \$35 million Capital Improvement Program would fall short of funds because of cost overruns, litigation and unforeseen construction problems. Without additional financing, work on Mills High School could not be completed. At the April 20, 2006 Board of Trustees meeting (Appendix 3), the Superintendent requested that the Board approve a \$15 million private placement variable rate “low floater” issue, COP#3. This debt was to be paid from developer fees.

COP#3 is referred to as a “low floater” private placement issue. Although many individuals interviewed during this investigation referred to the complexity of COP#3, few could explain how it worked. The Grand Jury was told that the structure of this debt is attractive to companies regulated by the Securities and Exchange Commission because of a requirement that certain companies must maintain liquidity. Short-term investments in debt, such as the SMUHSD COP#3, fulfill the liquidity requirement for these investors because this type of debt comes due weekly. COP#3 was promoted to the District as a debt instrument that would “close fast and [the District would] have money quickly.”²² The District at this point was in dire need of funds to finish the construction at Mills High School, so obtaining financing quickly was important.

The COP#3 financing concept was introduced to District staff by third parties during the Spring and Summer of 2005. Payment of consultant fees was not discussed during the initial meeting; however, the Grand Jury received testimony that a fee of \$25,000 was to be paid to Strategic School Solutions if and only if the District used the services of Cooperman & Associates. The CEO of Strategic School Solutions introduced the financial advisor, Cooperman & Associates, to District personnel. Cooperman & Associates was used, and the \$25,000 was paid to Strategic School Solutions out of the closing costs, despite the fact that there was no written contract between the District and Strategic School Solutions and no agreement with Cooperman & Associates requiring such a payment. The Grand Jury’s attempts to learn more about this transaction were frustrated because a key witness declined to answer, asserting his Fifth Amendment rights.

In these types of financial transactions, the point at which funds are dispersed is called a closing. One of the problems, yet to be fully understood by the Grand Jury, is that there appears to be more than one closing for COP#3. A SMUHSD document states that there were “six failed closings leading up to the first stage closing.”²³ The first stage closing,

²² Interview of witness, March 27, 2007

²³ Quote from document received from SMUHSD

on June 28, 2006, produced \$15,000,000, but this closing actually represented an interim bank loan pending funding of the COP. Although documentary communications indicate that this interim loan duration was to have been for only a brief period, i.e., one to two weeks, the final closing did not occur until November 1, 2006. The District paid 8.25% interest on the interim bank loan instead of the 3.5%, tax exempt to investors, paid for COPs #1 and #2. The Grand Jury calculated that the difference in interest rates resulted in the District paying additional interest payments of more than \$245,000 (see Exhibit 2 below). The Grand Jury is very disturbed that this was allowed to occur, since one of the duties of Cooperman & Associates was to "...[a]ssist the District in controlling costs of issuance from all advisors and parties."²⁴

Exhibit 2 San Mateo Union High School District COP #3 Interest Calculation of Interim Loan Excess Interest							
From	Through		Higher Rate	Basis Days	Accrual @ higher rate	COPs #1 and #2 Rate	Interest Paid In Excess of Lower Rate
6/28/2006	6/28/2006	\$15,000,000.00	8.00%	1	\$3,287.67	3.50%	\$1,438.36
6/29/2006	10/12/2006	\$15,000,000.00	8.25%	106	\$359,383.56	3.50%	\$152,465.75
10/13/2006	10/15/2006	\$15,000,000.00	8.25%	3	\$10,171.23	3.50%	\$4,315.07
10/16/2006	10/16/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/17/2006	10/17/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/18/2006	10/18/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/19/2006	10/19/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/20/2006	10/22/2006	\$15,000,000.00	8.25%	3	\$10,171.23	3.50%	\$4,315.07
10/23/2006	10/24/2006	\$15,000,000.00	8.25%	2	\$6,780.82	3.50%	\$2,876.71
10/25/2006	10/25/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/26/2006	10/29/2006	\$15,000,000.00	8.25%	4	\$13,561.64	3.50%	\$5,753.42
10/30/2006	10/30/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
10/31/2006	10/31/2006	\$15,000,000.00	8.25%	1	\$3,390.41	3.50%	\$1,438.36
11/1/2006	11/1/2006	\$15,000,000.00	8.25%	0	\$0.00	3.50%	\$0.00
Total					\$427,089.04		\$181,232.88
Excess Interest as of 11/1/06							\$245,856.16

Documentation and Closing Costs

While the final closing of COP#3 did not occur until November 1, 2006, the District was required to pay closing and other related costs on June 28, 2006. These costs are shown below in Exhibit 3.

²⁴ Financial Consulting Agreement, May 1, 2006.

**Exhibit 3
San Mateo Union High School District
Amounts Paid for the Administration of COP #3**

Date Paid

6/28/2006 Closing costs paid to the following companies:	
Holland & Knight LLP (Bond Counsel)	\$45,000.00
California School Boards Assoc (Lessor Fees)	\$7,500.00
Shupe & Finkelstein (District Counsel)	\$3,560.00
Strategic School Solutions (Investor Consultant)	\$25,000.00
Cooperman Associates (District Consultant)	\$63,000.00
Emmet Marvin & Martin LLP (BONY Counsel)	\$19,937.50
	<hr/>
Total Paid - Closing Costs	<u>\$163,997.50</u>
6/28/2006 Drinker Biddle & Reath LLP (Counsel for JP Morgan)	<u>\$22,500.00</u>

The Grand Jury requested documents from the District and individuals outside the District, both informally and by subpoena, including, but not limited to the following:

1. Any or all documents relating to the San Mateo Union High School District's \$25,000 payment to Strategic School Solutions.
2. Any or all documents relating to the District's \$63,000 payment to Cooperman and Associates.
3. Any and all documents relating to borrowing agreements entered into while the third Certificate of Participation, aka "COP3," was being funded.
4. A copy of Cooperman and Associates' contract with the San Mateo Union High School District, and any other contract between principals of Cooperman and Associates and the San Mateo Union High School District, in any form, and any documents relating to such contracts.

Although the Grand Jury received many documents, those were mostly correspondence and some projected debt service schedules. No formal written agreements involving COP#3 were delivered. When asked about the \$25,000 payment to Strategic Schools Solutions (Exhibit 3 above), District officials did not know what services Strategic School Solutions provided to the District.

Lack of Revenue Stream to Pay COP#3

Subpoenaed documents produced to the Grand Jury included debt service schedules at various rates. Below, re-created as Exhibit 4, is a projected debt service schedule at 4.25% interest, which is offered as an example of such a schedule. The schedule does not identify the source of the revenue that would pay the COP. This would seem to be an important comparison for individuals trying to determine if debt repayment is feasible.

None of the documents the Grand Jury received from individuals outside the District indicated how the COP would be paid.

Exhibit 4 San Mateo Union High School District Gross Debt Service Schedule and Calculation of Total Annual Payments Variable Rate Lease Revenue Bonds, Series 2006 (20 Year Term)											
Fiscal Year	Remaining Principal	Principal Payment	Rate 1	Interest	Debt Service	Capitalized Interest	LOC Fees	Remarketing Fees	Annual Trustee Fees	Annual Payments	Ending Principal Balance
9/1/06	15,000,000										15,000,000
6/1/07	15,000,000		4.25%	478,125.00	478,125.00	(478,125.00)	85,000.00	0.00	1,300.00	86,300.00	15,000,000
6/1/08	15,000,000	455,000	4.25%	637,500.00	1,092,500.00	(346,875.00)	85,000.00	0.00	1,300.00	831,925.00	14,545,000
6/1/09	14,545,000	475,000	4.25%	618,162.50	1,093,162.50		85,000.00	0.00	1,300.00	1,179,462.50	14,070,000
6/1/10	14,070,000	510,000	4.25%	597,975.00	1,107,975.00		67,800.00	0.00	1,300.00	1,177,075.00	13,560,000
6/1/11	13,560,000	535,000	4.25%	576,300.00	1,111,300.00		65,125.00	0.00	1,300.00	1,177,725.00	13,025,000
6/1/12	13,025,000	560,000	4.25%	553,562.50	1,113,562.50		62,325.00	0.00	1,300.00	1,177,187.50	12,465,000
6/1/13	12,465,000	590,000	4.25%	529,762.50	1,119,762.50		59,375.00	0.00	1,300.00	1,180,437.50	11,875,000
6/1/14	11,875,000	615,000	4.25%	504,687.50	1,119,687.50		56,300.00	0.00	1,300.00	1,177,287.50	11,260,000
6/1/15	11,260,000	645,000	4.25%	478,550.00	1,123,550.00		53,075.00	0.00	1,300.00	1,177,925.00	10,615,000
6/1/16	10,615,000	675,000	4.25%	451,137.50	1,126,137.50		49,700.00	0.00	1,300.00	1,177,137.50	9,940,000
6/1/17	9,940,000	710,000	4.25%	422,450.00	1,132,450.00		46,150.00	0.00	1,300.00	1,179,900.00	9,230,000
6/1/18	9,230,000	740,000	4.25%	392,275.00	1,132,275.00		42,450.00	0.00	1,300.00	1,176,025.00	8,490,000
6/1/19	8,490,000	775,000	4.25%	360,825.00	1,135,825.00		38,575.00	0.00	1,300.00	1,175,700.00	7,715,000
6/1/20	7,715,000	815,000	4.25%	327,887.50	1,142,887.50		34,500.00	0.00	1,300.00	1,178,687.50	6,900,000
6/1/21	6,900,000	855,000	4.25%	293,250.00	1,148,250.00		30,225.00	0.00	1,300.00	1,179,775.00	6,045,000
6/1/22	6,045,000	895,000	4.25%	256,912.50	1,151,912.50		25,750.00	0.00	1,300.00	1,178,962.50	5,150,000
6/1/23	5,150,000	935,000	4.25%	218,875.00	1,153,875.00		21,075.00	0.00	1,300.00	1,176,250.00	4,215,000
6/1/24	4,215,000	980,000	4.25%	179,137.50	1,159,137.50		16,175.00	0.00	1,300.00	1,176,612.50	3,235,000
6/1/25	3,235,000	1,030,000	4.25%	137,487.50	1,167,487.50		11,025.00	0.00	1,300.00	1,179,812.50	2,205,000
6/1/26	2,205,000	1,075,000	4.25%	93,712.50	1,168,712.50		5,650.00	0.00	1,300.00	1,175,662.50	1,130,000
6/1/27	1,130,000	1,130,000	4.25%	48,025.00	1,178,025.00				1,300.00	1,179,325.00	
Totals		15,000,000		8,156,600.00	23,156,600.00	(825,000.00)	940,275.00	0.00	27,300.00	23,299,175.00	195,670,000

It should be noted that in the above example the annual payment starting in 2009 is almost \$1.2 million per year. The other two debt service schedules received by the Grand Jury, one for a 4.75% interest rate and another for a 5.25% interest rate, show correspondingly greater annual payments (Note: the actual interest rate fluctuates weekly). Documents obtained from the District indicate that the developer fees, the source of payment, are currently projected to be only \$475,000 per year for the life of the COP. The General Fund is the only other source of revenue to pay the annual shortfall.

A document regarding the financing of COP#3 was presented by the District's current CBO at the February 8, 2007 Board of Trustees meeting. It is re-created below as Exhibit 5. This worksheet shows \$475,000 developer fee payments, principal payments totaling \$15,000,000 through 2035 and shortfall of payments to be paid from the General Fund from 2008 through 2027. Although the Grand Jury requested additional information, no other document created at the time of COP#3 funding that models debt service and revenue streams was produced by the District.

Exhibit 5
COP #3 Projected Net Debt Service Compared to Developer Fees
(Slide Copied From February 8, 2007 Board Meeting)

Fiscal Year	Remaining Principal	Principal Payment	Rate 1	Interest	Debt Service	Capitalized Interest	LOC Fees	Ratings Fees	Net Debt Service	Projected Developer Fees	Surplus (Shortfall)
6/30/07	15,000,000			616,250	616,250	(616,250)	75,000	2,200	77,200	475,000	397,800
6/30/08	15,000,000	455,000	4.25%	637,500	1,092,500		75,000	2,200	1,169,700	475,000	(694,700)
6/30/09	14,545,000	475,000	4.25%	618,163	1,093,163		75,000	2,200	1,170,363	475,000	(695,363)
6/30/10	14,070,000	510,000	4.25%	597,975	1,107,975		67,800	2,200	1,177,975	475,000	(702,975)
6/30/11	13,560,000	535,000	4.25%	576,300	1,111,300		65,125	2,200	1,178,625	475,000	(703,625)
6/30/12	13,025,000	560,000	4.25%	553,563	1,113,563		62,325	2,200	1,178,088	475,000	(703,088)
6/30/13	12,465,000	590,000	4.25%	529,763	1,119,763		59,375	2,200	1,181,338	475,000	(706,338)
6/30/14	11,875,000	615,000	4.25%	504,688	1,119,688		56,300	2,200	1,178,188	475,000	(703,188)
6/30/15	11,260,000	645,000	4.25%	478,550	1,123,550		53,075	2,200	1,178,825	475,000	(703,825)
6/30/16	10,615,000	675,000	4.25%	451,138	1,126,138		49,700	2,200	1,178,038	475,000	(703,038)
6/30/17	9,940,000	710,000	4.25%	422,450	1,132,450		46,150	2,200	1,180,800	475,000	(705,800)
6/30/18	9,230,000	740,000	4.25%	392,275	1,132,275		42,450	2,200	1,176,925	475,000	(701,925)
6/30/19	8,490,000	775,000	4.25%	360,825	1,135,825		38,575	2,200	1,176,600	475,000	(701,600)
6/30/20	7,715,000	815,000	4.25%	327,888	1,142,888		34,500	2,200	1,179,588	475,000	(704,588)
6/30/21	6,900,000	855,000	4.25%	293,250	1,148,250		30,225	2,200	1,180,675	475,000	(705,675)
6/30/22	6,045,000	895,000	4.25%	256,913	1,151,913		25,750	2,200	1,179,863	475,000	(704,863)
6/30/23	5,150,000	935,000	4.25%	218,875	1,153,875		21,075	2,200	1,177,150	475,000	(702,150)
6/30/24	4,215,000	980,000	4.25%	179,138	1,159,138		16,175	2,200	1,177,513	475,000	(702,513)
6/30/25	3,235,000	1,030,000	4.25%	137,488	1,167,488		11,025	2,200	1,180,713	475,000	(705,713)
6/30/26	2,205,000	1,075,000	4.25%	93,713	1,168,713		5,650	2,200	1,176,563	475,000	(701,563)
6/30/27	1,130,000	1,130,000	4.25%	48,025	1,178,025		0	2,200	1,180,225	475,000	(705,225)
6/30/28										475,000	475,000
6/30/29										475,000	475,000
6/30/30										475,000	475,000
6/30/31										475,000	475,000
6/30/32										475,000	475,000
6/30/33										475,000	475,000
6/30/34										475,000	475,000
6/30/35										475,000	475,000
Totals	15,000,000			8,294,725	23,294,725	(616,250)	910,275	46,200	23,634,950	13,775,000	(9,859,950)

Qualified Reports and COP Certifications

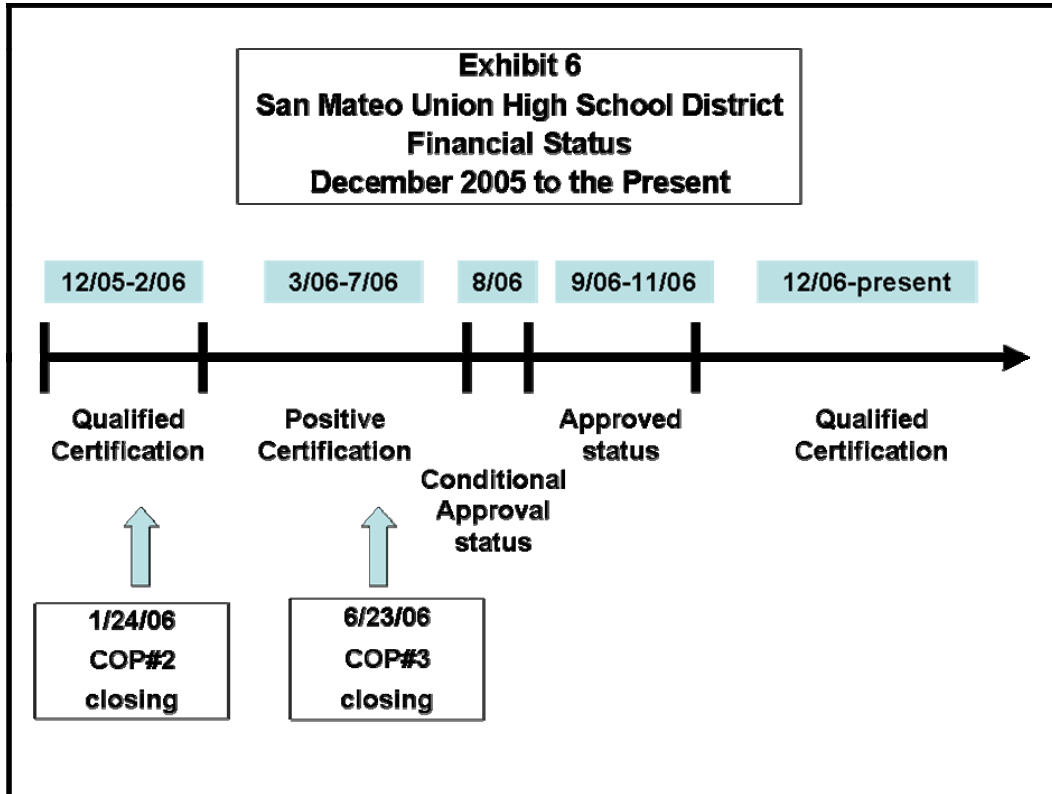
According to Sections 42130 and 42131 of the California Education Code, the superintendent of each school district has to submit two financial reports to the governing board of the district each year, one covering the financial and budgetary status of the district for the period ending October 31 and the other for the period ending January 31. These reports must certify whether the district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. There are three levels of certification, *positive*, *qualified*, and *negative*, that indicate whether the district may, may not, or is unable to meet its financial obligations for this time period.

The First Interim Financial Statement for the period July 1, 2005 to October 31, 2005 (representing an interim report for the fiscal year ended June 30, 2006, prepared on November 30, 2005) was presented to the Board of Trustees (Appendices 4 and 5) at its December 8, 2005 meeting. The minutes portray a more favorable financial picture than actually existed. "It was moved by Trustee [Name withheld] and seconded by Trustee [Name withheld] that the Board of Trustees approve the First Interim Report for Fiscal Year 2005-2006 and certify that the San Mateo Union High School District will be able to meet its financial obligations for the current fiscal year and the subsequent two years. The motion carried unanimously." It should be noted that the First Interim Financial Statement was considered "*qualified*" certification. A letter dated January 17, 2006 from the San Mateo County Office of Education to the Board's President stated the following, "*The County Superintendent of Schools Office has reviewed the San Mateo Union High*

School District's First Interim Report for fiscal year 2005-06 and concurs with the district's qualified certification."

A "qualified" certification indicates that the District may not be able to meet its financial obligations and results in unfavorable restrictions. One such restriction is that all new COPs issued by the District must be approved by the County Superintendent of Schools.

Exhibit 6 below is a summary of the District's financial status from December 2005 to the present.



One of the reasons for the *qualified* certification of the First Interim Financial Statement was that District reserves fell below three percent because the County was required to refund some of the property tax revenue it had received earlier that year and that reduced the District's revenue for that year. The District successfully argued to the County Superintendent of Schools that this tax refund was an anomaly, which allowed the District to receive a *positive* certification for the Second Interim Financial Statement (March 2006 through July 2006).

Erroneous Certifications

In January 2006 the District's former CBO signed a Certificate of Participation agreement for COP#2 erroneously certifying that the District had a *positive* Financial Statement (i.e., without financial difficulties), so the County Superintendent's review and

approval of the COP was not required. The pertinent language of the certification includes the following, “...*the District did not file and does not expect to file a qualified or negative certification...*” This document is re-created in part below.

\$15,000,000
SAN MATEO UNION HIGH SCHOOL DISTRICT
CERTIFICATES OF PARTICIPATION
(2006 School Facilities Bridge Funding Program)

CERTIFICATE REGARDING SECTION 42133
OF THE CALIFORNIA EDUCATION CODE

I, [NAME WITHHELD BY GRAND JURY], Associate Superintendent, Business Services of the San Mateo Union High School District (the "District"), for the purpose of showing compliance with the provisions of California Education Code Section 42133, hereby certify that, in fiscal year ended June 30, 2005 and June 30, 2006, the District did not file and does not expect to file a qualified or negative certification pursuant to California Education Code Section 42131(a)(1) and the San Mateo County Superintendent of Schools did not classify the District's certifications for each such fiscal year to be qualified or negative pursuant to California Education Code 42131(a)(2).

signed by the former CBO on January 24, 2006

In June 2006 the District Superintendent signed a similar document and erroneously certified the same statement for COP#3. (See recreated document below). The District's financial status was *positive* on June 28, 2006, the date of the Superintendent's certification. However, the District had a *qualified* certification for the First Interim Financial Statement and, therefore, the certification was improper. The District Superintendent further certified that the San Mateo County Superintendent of Schools was notified of the approval by the Board of Trustees to proceed with the execution and delivery of the above-referenced Certificates of Participation and was provided with the repayment schedules for the Certificates. The Grand Jury heard testimony that this did not occur.

These erroneous certifications are technical errors and do not incur fines or penalties to the District. However, at least in the case of COP#3, the County Superintendent did not know about the COP and therefore did not have a chance to review the debt service and revenue stream as prescribed in California Education Code Section 42133(a) (Appendix 6) and was not provided “*repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation...*” as prescribed in Code Section 17150(a) (Appendix 7).

\$15,000,000
SAN MATEO UNION HIGH SCHOOL DISTRICT
CERTIFICATES OF PARTICIPATION
(FINANCING FOR HIGH SCHOOL RENOVATION PROJECTS), SERIES 2006
CERTIFICATE REGARDING COMPLIANCE
WITH THE CALIFORNIA EDUCATION CODE

I, [Name withheld], Superintendent of the San Mateo Union High School District (the "District"), hereby certify as follows:

1. For the purpose of showing compliance with the provisions of California Education Code Section 42133, I hereby certify that, in fiscal years ending June 30, 2004 and June 30, 2005 and in the current year to date, the District did not file and does not expect to file a qualified or negative certification pursuant to California Education Code Section 42131(a)(1) and the San Mateo County Superintendent did not classify the District's certifications for each such fiscal year to be qualified or negative pursuant to California Education Code 42131 (a)(2), and I further certify that no such filing or classification has been made in the current fiscal year.

2. For the purpose of showing compliance with the provisions of California Education Code Section 17423, I hereby certify that, as of the date hereof, fifty percent (50%) of the remaining lease payments due from the District under and pursuant to that certain Master Lease/Purchase Agreement dated as of June 1, 2006 between the District, as lessee, and California School Boards Association Finance Corporation, with respect to Mills High School, assuming that the interest rate applicable thereto remains fixed at the rate in effect as of the date hereof for the entire remaining term thereof, plus the total amount of the District's bonded indebtedness outstanding as of the date hereof does not exceed 7.5% of the assessed value of the taxable property located within the District (with such assessed value not reduced by the exemption of the assessed value of business inventories in the District and not reduced by the homeowners' property tax exemption).

3. For the purpose of showing compliance with the provisions of California Education Code Section 17150(a), I hereby certify as follows

a. I did notify the San Mateo County Superintendent and the San Mateo County Auditor of the approval by the Board of Trustees of the District to proceed with the execution and delivery of the above-referenced Certificates Of Participation (Financing For High School Renovation Projects), Series 2006 (the Certificates).

b. I did provide the repayment schedules for the Certificates, and evidence of the ability of the District to repay the Certificates, to the San Mateo County Auditor, the San Mateo County Superintendent, the Board of Trustees of the District and the public.

Dated: June 28, 2006

SAN MATEO UNION HIGH SCHOOL
DISTRICT

By:
[Name Withheld], Superintendent

Board of Trustees Financial Education

The California School Boards Association's (CSBA) Professional Governance Standards state that an effective trustee "*[p]articipates in professional development and commits*

the time and energy necessary to be an informed and effective leader.”²⁵ In another article the CSBA describes how the trustee assists in effective board governance. “Once elected, however, board members have a responsibility to acquire the knowledge and skills that will enable them to be effective as a team. Most board members recognize the need to provide for continual enhancement of staff’s skills through high-quality professional development. It is important that they also recognize the need to invest in their own development.”²⁶ Professional development could include courses in accounting and finance.

Findings

- Of the \$20 million “borrowed” through COP#1, \$1 million went to the Housing Loan Program for teachers, instead of to the Building Fund. The money transferred to the Housing Loan Program has not been repaid to the Building Fund.
- COP#3 appears to have been adopted by the District and Board of Trustees without full knowledge or understanding of the structure and financial impact that it would have on the General Fund.
- Strategic School Solutions was paid \$25,000. The Grand Jury requested but did not receive a contract authorizing such payment.
- The interest on COP#3 for the period June 28, 2006 through November 1, 2006 was \$245,000 greater than it would have been at the COP#1 and COP#2 rates.
- The former CBO erroneously certified the District’s financial status for COP#2.
- The Superintendent erroneously certified the District’s financial status for COP#3 and did not properly apprise the San Mateo County Superintendent of Schools of the COP.
- The Superintendent did not provide the repayment schedules for the COP#3 obligation, and evidence of the ability of the District to repay that obligation, to the County Superintendent of Schools.

²⁵ California School Boards Association, *Professional Governance Standards*, <http://www.csba.org/pgs/boards.cfm>

²⁶ Campbell, Davis, *CSBA Develops Effective Governance Model*, California School Boards Association, March, 1999. <http://www.csba.org/pgs/effective.cfm>

Recommendations

Part 1: Overtime and Contracts Documentation

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

1. Obtain an opinion of legal counsel regarding the legality and enforceability of the former Executive Assistant's consulting agreement, and to the extent such agreement is deemed illegal or unenforceable, determine the District's rights.
2. Obtain a review by legal counsel of the documentation for the former Executive Assistant's overtime payments and determine its adequacy and the propriety of payments.
3. Direct legal counsel to review District compliance with all applicable labor laws governing employment relationships with administrative employees.
4. Establish clear and comprehensive policies governing consultant agreements and enforce them consistently.
5. Establish clear and comprehensive overtime policies and enforce them consistently.

Part 2: OPSC Penalties

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees:

6. Establish clear and comprehensive policies and procedures governing all applications for funding from third parties, including requirements for Board of Trustees resolutions and signatures of the President and Superintendent on funding applications.
7. Establish clear and comprehensive policies for requests for approval of funding applications, including requiring the Superintendent and his/her representatives to be familiar with requirements relating to specific funding applications prior to submittal of any request to the Board of Trustees and to provide the Board with clear and detailed explanations of the legal and financial requirements of the request.

Part 3: Accounting and Authorization Issues

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

8. Cause the General Fund to repay its \$1 million loan from the Building Fund as soon as possible.
9. Ensure that all interfund transfers are properly authorized by the Board of Trustees after appropriate notice and submission of detailed requests before any transfer is made.
10. Determine whether reimbursements of the General Fund for indirect or overhead costs from the Building Fund were properly documented and otherwise allowable under the terms of the funding.
11. Direct financial personnel and outside auditors to disclose adequately in the notes to the financial statements all uncertainties of potential loss as described in Statement of Financial Accounting Standards No. 5 – Accounting for Contingencies, including uncertainties of potential loss due to property tax refunds.

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees establish clear and comprehensive policies for each of the following:

12. The authorization and repayment of interfund loans.
13. The reimbursement of indirect costs incurred by the General Fund on behalf of the Building Fund.
14. The adequate disclosure of all material uncertainties of potential loss.

Part 4: Certificates of Participation

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

15. Direct legal counsel to determine the propriety of the Housing Loan Program funding and the basis upon which it received payment from COP#1.
16. Establish financial controls and clear and comprehensive policies governing disbursements of District funds, including review and retention of supporting documentation.
17. Direct legal counsel to determine the propriety of the \$25,000 “finder’s fee” paid to Strategic School Solutions and the District’s rights of recovery.
18. Direct legal counsel to review the District’s payment of excessive interest costs attributed to the late closing of COP#3 and determine the District’s rights and remedies to recover some or all of the excess.
19. Verify that the County Superintendent of Schools has all required documentation for the COP#3 issue as prescribed in California Education Code Section 17150(a).

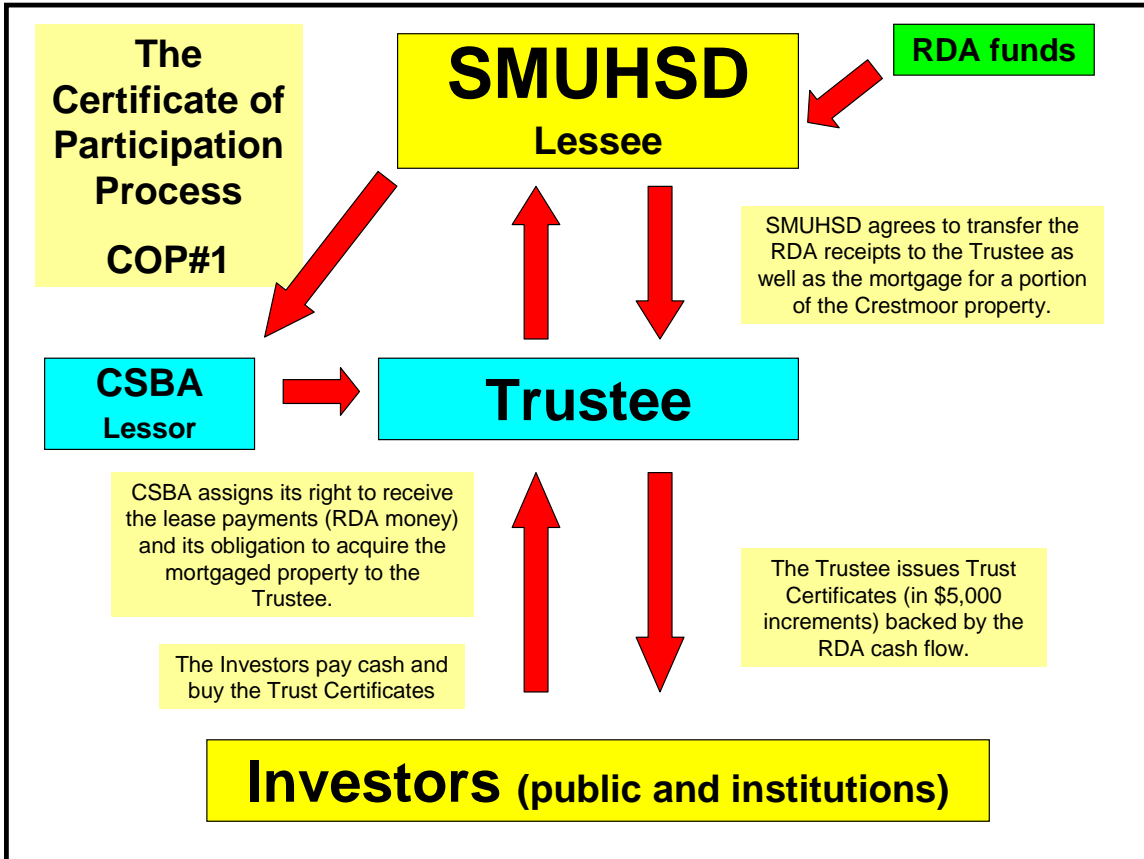
The Grand Jury recommends that the San Mateo Union High School District Board of Trustees:

20. Embrace the Professional Governance Standards of the California School Boards Association and require education in school district finance and/or accounting for its members.

The Grand Jury recommends that the San Mateo County Superintendent of Schools:

1. Establish policies and procedures to verify that the requirements of California Education Code Section 17150(a) are followed and that the superintendents of all school districts provide on a timely basis to the County Auditor, the County Superintendent, the school district’s governing board, and the public the repayment schedules for all new debt obligations and evidence of the school district’s financial ability to repay those obligations.
2. Establish educational programs and curricula in school district finance and/or accounting available to members of all school boards within San Mateo County to ensure that all trustees and superintendents have the necessary skills to perform their jobs in the manner expected of them by the public.

Appendix 1 The Certificate of Participation Process COP#1



For more information about Certificates of Participation see:

National Association of Counties, *Certificates of Participation: An Innovative Financing Alternative For Counties*, February, 1999 Jim Culotta

<http://www.naco.org/Template.cfm?Section=Publications&template=/ContentManagement/ContentDisplay.cfm&ContentID=5457>

Appendix 2 Unadopted Minutes of March 8, 2007

[Name withheld], Associate Superintendent Business Services, presented the options available for the Board to consider for the structure and issuance of a Certificate of Participation to consolidate existing COPs which have contributed to the success of the District's Capital Improvement Program which began in 2000. [He/She] reported that the 2007 COP would release the liens on Crestmoor and Mills High School sites and place a lien on the Hillsdale High School site, would fund \$23 million of Phase I capital improvement projects, would consolidate all outstanding variable rate COPs, would be protected by fixed-rate financing, and would provide flexible prepayment options.

**RESOLUTION:
CERTIFICATE OF
PARTICIPATION**

[Name withheld], President, District Teachers' Association, reiterated [his/her] concerns regarding the proposal for the restructuring and issuance of Certificates of Participation for 2007. [He/she] noted that tough choices will have to be made in the future, away from the programs and instruction that are the vanguard of this district.

It was moved by Trustee [name withheld] and seconded by Trustee [name withheld] that the Board of Trustees adopt the attached resolution for structure and issuance of a certificate of participation to consolidate existing COP's. The motion carried unanimously.

<http://www.smuhsd.k12.ca.us/files/0308.07.pdf>

Appendix 3 Agenda and Unadopted Minutes of April 20, 2006

Agenda

BOARD AGENDA – April 20, 2006

Page 7

J. REPORTS OF THE SUPERINTENDENT (Continued)

2. Approval of Private Placement “Low Floater” Financing

The administration recommends that the Board of Trustees approve the proposal for a \$15 million private placement variable rate “low floater” issue in order to continue with modernization of Buildings A and D on the Mills High School campus. The details will be presented at the Board meeting.

RECOMMENDATION: It is recommended that the Board of Trustees take the recommended action for a \$15 million private placement variable rate “low floater” issue in order to continue with modernization of Buildings A and D on the Mills High School campus.

[name withheld]

Unadopted Minutes

It was moved by Trustee [name withheld] and seconded by Trustee [name withheld] that the Board of Trustees adopt the attached Resolution for Financing of High School Renovation Projects. The motion carried unanimously.

APPROVAL OF
PRIVATE
PLACEMENT
FINANCING

For Agenda - <http://www.smuhd.k12.ca.us/files/Agenda420.06.pdf>

For Minutes - http://www.smuhd.k12.ca.us/files/minutes_April_20__2006.pdf

Appendix 4 Agenda of December 8, 2005

2. Presentation of First Interim Report for Fiscal Year 2005-2006

Since 1986, school districts have been required to submit financial data and governing board certifications twice annually to the State Controller and Superintendent of Public Instruction by provisions of the Education Code. Assembly Bill 1200 (Chapter 1213 of 1991) requires governing boards to certify fiscal solvency of the District at each reporting period, October 31 and January 31. This first certification of fiscal solvency by the Board must be filed with the County Office of Education by December 15, 2005.

Districts are required to certify that they will be able to meet all financial obligations for the current fiscal year and the subsequent two years and maintain State-mandated reserves of 3 percent minimum in the current and the next two fiscal years. The Multi-Year Projection Disclosure Report provides this data and is incorporated as part of the First Interim certification. The First Interim Report includes the following items which are presented for the Board's review and approval:

DISTRICT CERTIFICATION OF INTERIM REPORT

State form that certifies the District will be able to meet its financial obligations for the current fiscal year and two succeeding fiscal years and is committed to maintaining a balanced budget with State-required 3 percent reserves in the current year and the next two fiscal years.

BOARD AGENDA – December 08, 2005

Page 9

I. DIVISION OF BUSINESS SERVICES (Continued)

2. Presentation of First Interim Report for Fiscal Year 2005-2006 (Continued)

GENERAL FUND UNRESTRICTED/RESTRICTED SUMMARY

Projected revenues and expenditures for the 2005-2006 fiscal year, based on current information.

ACTUAL AND PROJECTED MONTHLY CASH FLOW

A schedule of actual and projected monthly cash flows for the General Fund for 2005-2006. The cash flow schedule shows that if the District had not issued Tax and Revenue Anticipation Notes (TRANS) in July, the General Fund would have been in a negative cash position July through November.

AVERAGE DAILY ATTENDANCE

Average Daily Attendance for the 2005-2006 fiscal year, based on current information.

SUMMARY REVIEW – STANDARDS & CRITERIA

Analysis and disclosure of fiscal issues.

FIRST INTERIM FOR OTHER FUNDS

The Adult Education Fund (Fund 11), Child Development Fund (Fund 12), and Cafeteria Fund (Fund 13) had no material changes to their budgets during the first reporting period.

BUDGET ASSUMPTIONS

A narrative required by the San Mateo County Office of Education, explaining the various components of the First Interim Report.

BUDGET REVISIONS

Budget revisions for General Fund (01), Adult Education (11), Child Development (12), Cafeteria (13), and Foundation Trust (73).

RECOMMENDATION: It is recommended that the Board of Trustees approve the First Interim Report for Fiscal Year 2005-2006 and certify that the San Mateo Union High School District will be able to meet its financial obligations for the current fiscal year and the subsequent two years.**

[name withheld]

[name withheld]

[name withheld]

<http://www.smuhsd.k12.ca.us/files/Agenda1208.05.pdf>

Appendix 5

Unadopted Minutes of December 8, 2005

[Name withheld], Associate Superintendent Business Services, presented the First Interim Report for the Fiscal Year 2005-2006, certifying the solvency of the school district for the current fiscal year and the subsequent two years and maintain a reserve of 3 percent. [He/She] noted that, after receipt of the August tax levy letter from the County Assessors Office, the unsecured property tax revenues were reduced by 17.59 percent; thus, reducing the budget reserve to 1.07 percent for 2005-2006; and that, with proper budgeting, the 3 percent reserve can be established for the 2006-2007 and 2007-2008 fiscal years. [He/She] noted that, in order to rebuild the reserve for 2005-2006, there is a budget freeze on hiring for all non-essential positions.

FIRST INTERIM REPORT

It was moved by Trustee [name withheld] and seconded by Trustee [name withheld] that the Board of Trustees approve the First Interim Report for Fiscal Year 2005-2006 and certify that the San Mateo Union High School District will be able to meet its financial obligations for the current fiscal year and the subsequent two years. The motion carried unanimously.

http://www.smuhsd.k12.ca.us/files/minutes_Dec_08__2005.pdf

Appendix 6
California Education Code
Section 42133(a)

A school district that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or in the next succeeding fiscal year, certificates of participation, tax anticipation notes, revenue bonds, or any other debt instruments that do not require the approval of the voters of the district, nor may the district cause an information report regarding the debt instrument to be submitted pursuant to subdivision (e) of Section 149 of Title 26 of the United States Code, unless the county superintendent of schools determines, pursuant to criteria established by the Superintendent of Public Instruction, that the district's repayment of that indebtedness is probable. A school district is deemed to have a qualified or negative certification for purposes of this subdivision if, pursuant to this article, it files that certification or the county superintendent of schools classifies the certification for that fiscal year to be qualified or negative.

Appendix 7
California Education Code
Section 17150(a)

Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

C:\Documents and Settings\mcavin\Desktop\SMUHSD3_Final.doc

**San Mateo County Office of Education Responses
to the
2007 Grand Jury Recommendations
*Fiscal Irresponsibility of the San Mateo Union High School District Board of Trustees Report***

The Grand Jury recommends that the San Mateo County Superintendent of Schools:

1. Establish policies and procedures to verify that the requirements of California Education Code Section 17150(a) are followed and that the superintendents of all school districts provide on a timely basis to the County Auditor, the County Superintendent, the school district's governing board, and the public the repayment schedules for all new debt obligations and evidence of the school district's financial ability to repay these obligations.

I would like to thank the Grand Jury for its continued interest in pursuing a variety of avenues to enhance fiscal accountability for public education entities within San Mateo County. Such accountability is a cornerstone of the community's trust and confidence in its schools. The County Office of Education, through its fiscal oversight of school districts as authorized by AB 1200, has within the limits of its assigned authority endeavored to help school districts establish and maintain budgets that are fiscally sound.

Over the years the County Office has adopted a variety of methods to ensure the transparency and effectiveness of our oversight efforts, all the while being respectful of districts' legitimate budgetary autonomy.

In the wake of the fiscal reporting problems experienced by at least one local district and in concurrence with the Grand Jury's recommendation, we will take the following actions:

Annually we will notify all districts of the requirement under Education Code (EC) 17150(a) to submit repayment schedules for all new debt obligation and evidence of the financial ability to repay to the County Superintendent of Schools, County Auditor (Controller), district governing boards and the public. In addition, we will remind the districts of this requirement when we send the First and Second Interim budget review letters, thus notifying all districts at least three times a year of their responsibilities regarding reporting debt disclosure.

It is our intention to raise district awareness of the importance of debt disclosure and to routinize its reportage. In turn we will formally acknowledge every submission of debt repayment schedules.

2. Establish educational programs and curricula in school district finance and/or accounting available to members of all school boards within San Mateo County to ensure that all trustees and superintendents have the necessary skills to perform their jobs in the manner expected of them by the public.

Providing staff and Board Members with sufficient knowledge to effectively meet their responsibilities related to budgetary matters has proved to be a pervasive and persistent problem at every level of the educational system. Historically educators have primarily relied on the Chief Business Official (CBO) as the source for training in finance. For most administrators, knowledge about budgets comes from an on-the-job learning process.

Our County's CBOs meet on a regular basis and share information and best practices. Administrators also benefit from staff development provided by professional associations such as the Association of California School Administrators (ACSA), the California Association of School Business Officials (CASBO), School Services of California, etc. For Board Members, a source of budget training is the California School Boards Association (CSBA), which offers budget-related workshops at local venues and statewide conferences. It is also quite common for Board Members to receive information on school finance from such resources as School Services of California, EdSource, and other education-related publications.

All of these resources are helpful; however, I agree with the Grand Jury that they are not sufficient.

In direct response to Recommendation #2, the County Office of Education is arranging to have School Services of California provide at least one four-hour workshop, tailored to the particular financial concerns of San Mateo County and targeted specifically for Board Members and Superintendents. This will be repeated annually, to accommodate changes in board representatives and staff turnover.

Operating school districts in what can be objectively described as a severely under-funded State education system is a very difficult task; the County Office of Education pledges to renew its efforts to broaden and deepen the understanding of school finance not only for those who plan and oversee school budgets but for the general public as well.

San Mateo Union High School District

David Miller, Ph.D., Superintendent

Ethel C. Konopka, Associate Supt. Human Resources-Admin. Services.

Elizabeth McManus, Associate Supt. Business Services



650 North Delaware Street - San Mateo, CA 94401-1795

(650) 558-2299

(650) 762-0249 FAX

November 1, 2007

The Honorable John L. Grandsaert
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: FISCAL IRRESPONSIBILITY OF THE SAN MATEO UNION HIGH SCHOOL DISTRICT BOARD OF TRUSTEES REPORT

Dear Judge Grandsaert:

On June 7, 2007, the Grand Jury of San Mateo County published its "Fiscal Irresponsibility of the San Mateo Union High School District Board of Trustees" report. We appreciate the additional time that we have been given to respond to this report. As you can see in the body of the report, we have taken significant action between the time of the investigation and the issuance of the report and after the report was issued as well. We intend to take all action necessary to restore the public's confidence in our ability to be fiscally responsible. As with the previous reports, the Board overwhelmingly agrees with the findings and has taken action to address the issues.

As a School Board we are charged with setting policies and overseeing the implementation of those policies. The Board takes this responsibility very seriously and has not and will not allow, permit or approve any inappropriate action. We recognize that mistakes have been made and have vigorously acted to correct them. We have taken numerous actions, as detailed in this response and previous ones, to improve our oversight and policies. We intend to continue on this path, as indicated in this response and in the previous responses.

Please find our specific responses in the paragraphs below.

DISTRICT'S RESPONSE TO GRAND JURY'S FINDINGS

The Grand Jury's Findings appear below:

Findings on Page 8 and 9:

Consulting Agreement Findings

First Paragraph: The original consulting agreement was entered into on January 12, 2004, approximately six months before the District formally accepted the Executive Assistant's retirement request on July 31, 2004. It appears that the consulting agreement was negotiated while the Executive Assistant worked for the District.

Response to Findings in First Paragraph: This finding is correct. The agreement was entered into while the District employed the Executive Assistant.

Findings in Second Paragraph: The original consulting agreement states, “The parties hereby acknowledge that the manner, means and methods used by [name withheld] to achieve the desired results for the District lies within [name withheld] sole discretion and control.” This agreement does not call for any specific accomplishment by the consultant.

Response to Findings in Second Paragraph: This finding is correct.

Findings in Third Paragraph: A knowledgeable witness familiar with the policies of the District told the Grand Jury that no policies governing consulting agreements could be found.

Response to Findings in Third Paragraph: This finding is correct. The District is working with legal counsel to develop and establish policies for all consulting agreements.

Back Overtime Findings

Findings in First Paragraph: The former Superintendent had recommended that the consultant be paid back overtime-totalling \$88, 403. Documents obtained by the Grand Jury show a general record of the overtime, which is summarized in the Table below:

Worksheet Obtained by Grand Jury Showing Calculation of Overtime Earned by Consultant					
Overtime	Salary	OT Rate	Wks/Yr	Hrs/WK	Cost Shown On Worksheet (1)
2000-2001	\$70,990	\$57.72	42	13	\$31,513.00
2001-2002	\$78,226	\$63.60	40	13	\$33,071.00
2002-2003	\$83,526	\$67.91	41	13	\$36,195.00
Total Overtime Earned					\$100,779.00
Overtime Previously Paid					\$12,376.00
Overtime Still Owed (1)					\$88,403.00
(1) Recalculation made by Grand Jury shows amount to be calculated as \$88,407.15					

Response to Findings in First Paragraph: This finding is correct. We do not know who created this document. There are no records that support the 13 hours of overtime per week for 123 weeks as stated in this document. The district does have documentation of actual overtime claimed and paid during this same time period.

Findings in Second Paragraph: The Grand Jury learned that the attorney for the District told the Board of Trustees that they had to pay back overtime provided that it could be adequately and thoroughly documented.

Response to Findings in Second Paragraph: This is correct. The District has no records substantiating the over time as listed on the Worksheet.

Findings in Third Paragraph: Adequate and thorough documentation for overtime should include contemporaneous daily records of hours worked. Numerous requests by the Grand Jury yielded no contemporaneous daily records of the Executive Assistant’s overtime.

Response to Findings in Third Paragraph: We agree. There are no contemporaneous daily records to support this overtime claim.

Findings in Fourth Paragraph: The Board of Trustees met in closed session and approved the Executive Assistant’s overtime request. The published minutes of the November 13, 2003 Board of Trustees meeting included the following statement regarding the Board’s closed session, “President [name withheld] declared a recess so that members of the Board of Trustees could meet in closed session to hear pupil personnel matters and discuss confidential employee negotiations.”

Response to Findings in Fourth Paragraph: This is correct, with the exception that there is no documentation to support the finding that the Executive Assistant requested the overtime payment.

Findings in Fifth Paragraph: Requests for back overtime are unusual. According to the most recent California School Employees Association (CSEA) contract, "Prior to being worked, all overtime shall be authorized by the immediate supervisor. Overtime claims for work not pre-approved may be denied. Payment shall be for the actual number of hours worked in not less than one-quarter hour increments."

Response to Findings in Fifth Paragraph: This is correct. Current District procedures require pre-approval of all overtime. An overtime request form has been created which requires detailed justification for the proposed overtime, including date, time, purpose and fund that will be used to support transaction. This request form must be signed by the employee's direct supervisor and then must be submitted to the Associate Superintendent of Business for final approval. The request must be approved prior to the work being completed or no compensation will be paid.

Findings on Page 12:

Part 2: Office of Public School Construction Penalties

Findings in First Paragraph: On April 26, 2001, the SMUHSD submitted State Allocation Board SAB 50-05 forms requesting State bond funds totaling \$23,769,809 for Burlingame, Mills, Hillsdale and Aragon High Schools; the forms had material inaccuracies due to false certification.

Response to Findings in First Paragraph: After working collaboratively with the staff from the OPSC during the summer of 2007, the material inaccuracy claim was amicably resolved by both parties. All issues have been resolved with no financial penalty to the District.

Findings in Second Paragraph: The following are potential consequences of the false certification that may be levied by the SAB in June or July 2007:

- Forfeiture of the State funds
- Penalties exceeding \$2.8 million
- \$100 hourly charges for reexamining previous applications
- Loss of the right to self-certify future applications

Response to Findings in Second Paragraph: After working collaboratively with the staff from the OPSC during the summer of 2007, the material inaccuracy claim was amicably resolved by both parties. All issues have been resolved with no financial penalty to the District.

Findings on Page 13:

Part 3: Accounting and Authorization Issues

Findings in First Paragraph: The February 13, 2006 loan of \$1 million from the Building Fund to the General Fund was not ever repaid to the Building Fund as required by the statute.

Response to Findings in First Paragraph: The loan was fully repaid to the Building Fund. The Board authorized the repayment at a regularly scheduled Board meeting in June of 2007.

Findings in Second Paragraph: Transfers from the Building Fund to the General Fund on February 18, 2004, April 14, 2005 and May 19, 2006 are not supported by receipts for expenditures and may be unauthorized under Measure D.

Response to Findings in Second Paragraph: The District conducted a comprehensive review of the transfers and found expenditures charged to the General Fund that could be authorized as legal general obligation bond expenditures. The District Bond Counsel and external Auditors reviewed the process and expenditures.

Findings in Third Paragraph: Transfers from the Building Fund to the General Fund of February 18, 2004, April 14, 2005 and May 19, 2006 appear not to have been specifically authorized by the District Superintendent and Board of Trustees when the transfers occurred; they only appear as line items in the District's annual budget.

Response to Findings in Third Paragraph: All budget transfers are now approved by the Board of Trustees. The District hired a new Associate Superintendent (July 2006) charged with identifying and making all necessary changes to be in full compliance with all state regulations. In addition, the District has contracted with a new auditing firm.

Findings in Fourth Paragraph: Financial statement disclosures of contingent liabilities for the year ended June 30, 2006 are inadequate.

Response to Findings in Fourth Paragraph: The District concurs with this finding. The Board President and the Associate Superintendent of Business conducted an RFP for auditing services. An exemplary firm was selected. This firm will ensure that our financial statements comply with GAAP.

Findings on Page 27:

Part 4: Certificates of Participation (COPs)

Findings in First Paragraph: Of the \$20 million "borrowed" through COP#1, \$1 million went to the Housing Loan Program for teachers, instead of to the Building Fund. The Money transferred to the Housing Loan Program has not been repaid to the Building Fund.

Response to Findings in First Paragraph: The retired Associate Superintendent of Business advised the Board that \$1 million of the COP would be set-aside for the Housing Loan Program. It was later determined that the proceeds from the COP could not be used for the Housing Loan Program. In the interim, the loan committee awarded housing loans. Staff was directed to fund the teacher loans using cash from the General Fund and setting up a receivable on the general ledger (Accounts receivable). This action was not communicated to the Board. Immediately upon joining the District, the new Associate Superintendent of Business notified the Superintendent of the problem and the Housing Loan Program was suspended until further notice.

Findings in Second Paragraph: COP#3 appears to have been adopted by the District and Board of Trustees without full knowledge or understanding of the structure and financial impact that it would have on the General Fund.

Response to Findings in Second Paragraph: The Board was never provided with a detailed comprehensive analytical report regarding the bond structure. We were not advised that the revenue sources did not exist to support the debt payment or that the interest had been capitalized. As a result, the Board believed that adequate funding streams existed to address the annual debt payment.

Findings in Third Paragraph: Strategic School Solutions was paid \$25, 000. The Grand Jury requested but did not receive a contract authorizing such payment.

Response to Findings in Third Paragraph: The Board was never aware of this invoice. No agreement with Strategic School Solutions ever came before the Board in violation of District policy requiring Board approval of contracts. Legal counsel has been directed to seek repayment from this vendor.

Findings in Fourth Paragraph: The interest on COP#3 for the period June 28, 2006 through November 1, 2006 was \$245, 000 greater than it would have been at the COP#1 and COP#2 rates.

Response to Findings in Fourth Paragraph: The third COP was a private placement transaction and there were numerous problems in finalizing the agreement. All parties did not approve the trust agreement as quickly as initially anticipated, leading to taxable interest being charged to the District. The Board was never informed of these delays and was not informed of the interest costs being incurred by the District.

Findings in Fifth Paragraph: The San Mateo County Superintendent of Schools did not approve the transaction

Response to Findings in Fifth Paragraph: We believe that this finding is correct. The Board was not advised of this requirement. The new Associate Superintendent of Business has consolidated the COPS. Approval was obtained from the San Mateo County Superintendent of Schools prior to issuing the debt.

Findings in Sixth Paragraph: The Superintendent erroneously certified the District's financial status for COP#3 and did not properly apprise the San Mateo County Superintendent of Schools of the COP.

Response to Findings in Sixth Paragraph: This finding is correct. We believe that the Superintendent relied on information that did not prove to be correct. As noted above, all COPS have been consolidated and proper approval obtained.

Findings in Seventh Paragraph: The Superintendent did not provide the repayment schedules for the COP#3 obligation, and evidence of the ability of the District to repay that obligation, to the County Superintendent of Schools.

Response to Findings in Seventh Paragraph: This finding is correct. We believe that the Superintendent relied on information that did not prove to be correct.

Recommendations

Part 1: Overtime and Contracts Documentation

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

1. Obtain an opinion of legal counsel regarding the legality and enforceability of the former Executive Assistant's consulting agreement, and to the extent such agreement is deemed illegal or unenforceable, determine the District's rights.

Response: The District has retained legal counsel to provide the opinion.

2. Obtain a review by legal counsel of the documentation for the former Executive Assistant's overtime payments and determine its adequacy and the propriety of payments.

Response: The District has retained legal counsel to review the entire overtime issue.

3. Direct legal counsel to review District compliance with all applicable labor laws governing employment relationships with administrative employees.

Response: The District has retained legal counsel to conduct this review.

4. Establish clear and comprehensive policies governing consultant agreements and enforce them consistently.

Response: The District is working with legal counsel to draft these policies. The District will enforce all policies consistently.

5. Establish clear and comprehensive overtime policies and enforce them consistently.

Response: The District has implemented new overtime procedures as detailed earlier in this response.

Part 2: OPSC Penalties

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees:

6. Establish clear and comprehensive policies and procedures governing all applications for funding from third parties, including requirements for Board of Trustees resolutions and signatures of the President and Superintendent on funding applications.

Response: The District policies and procedures are being reviewed and revised, as needed, during this school year.

7. Establish clear and comprehensive policies for requests for approval of funding applications, including requiring the Superintendent and his/her representatives to be familiar with requirements relating to specific funding applications prior to submittal of any request to the Board of Trustees and to provide the Board with clear and detailed explanations of the legal and financial requirements of the request.

Response: The District policies are being reviewed and revised, as needed, during this school year.

Part 3: Accounting and Authorization Issues

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

8. Cause the General Fund to repay its \$1 million loan from the Building Fund as soon as possible.

Response: As stated above, this has been done.

9. Ensure that the Board of Trustees properly authorizes all interfund transfers after appropriate notice and submission of detailed request before any transfer is made.

Response: This procedure has been implemented.

10. Determine whether reimbursements of the General Fund for indirect or overhead costs from the Building Fund were properly documented and otherwise allowable under the terms of the funding.

Response: This has been completed and the new auditor has approved the reconciliation and charging of these funds.

11. Direct Financial personnel and outside auditors to disclose adequately in the notes to the financial statements all uncertainties of potential loss as described in Statement of Financial Accounting Standards No. 5 – Accounting for Contingencies, including uncertainties of potential loss due to property tax refunds.

Response: This has been completed as part of the RFP process in hiring a new auditor.

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees establish clear and comprehensive policies for each of the following:

12. The authorization and repayment of interfund loans.

Response: This has been completed.

13. The reimbursement of indirect costs incurred by the General Fund on Behalf of the Building Fund.

Response: This has been completed.

14. The adequate disclosure of all material uncertainties of potential loss.

Response: This has been completed.

Part 4: Certificates of Participation

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees direct the Superintendent to:

15. Direct legal counsel to determine the propriety of the Housing Loan Program funding and the basis upon which it received payment from COP#1.

Response: This has been completed.

16. Establish financial controls and clear and comprehensive policies governing disbursements of District funds, including review and retention of supporting documentation.

Response: The District is in the process of reviewing and revising these policies, as needed.

17. Direct legal counsel to determine the propriety of the \$25,000 “finder’s fee” paid to Strategic School Solutions and the District’s rights of recovery.

Response: The District is working with legal counsel to resolve this issue.

18. Direct legal counsel to review the District’s payment of excessive interest costs attributed to the late closing of COP#3 and determine the District’s rights and remedies to recover some of all of the excess.

Response: The District is working with legal counsel to resolve this issue.

19. Verify that the County Superintendent of Schools has all required documentation for the COP#3 issue as prescribed in California Education Code Section 17150(a).

Response: This has been completed.

The Grand Jury recommends that the San Mateo Union High School District Board of Trustees:

20. Embrace the Professional Governance Standards of the California School Boards Association and require education in school district finance and/or accounting for its members.

Response: The District is providing additional training in school district finance and accounting during this school year. Four trustees completed the CSBA Master of Boardmanship course and earned a certificate of completion. Three trustees completed the CSBA Masters in Governance Program and earned a certificate.

The Grand Jury recommends that the San Mateo County Superintendent of Schools:

1. Establish policies and procedures to verify that the requirements of California Education Code Section 17150(a) are followed and that the superintendents of all school districts provide on a timely basis to the County Auditor, The County Superintendent, the school district's governing board, and the public the repayment schedules for all new debt obligations and evidence of the school district's financial ability to repay those obligations.

Response: We support this recommendation.

2. Establish educational programs and curricula in school district finance and/or accounting available to members of all school boards within San Mateo County to ensure that all trustees and superintendents have the necessary skills to perform their jobs in the manner expected of them by the public.

Response: We support this recommendation.

In closing, the District, on behalf of its communities and students, would like to thank the members of the Grand Jury for the work that they do to the benefit of the citizens of San Mateo County. As you can see in our responses, we have taken action and have initiated action in all areas covered in this report. A number of the deficiencies you found had actually been corrected prior to the issuance of your report. Additional work has been completed since the issuance of your report and work continues today.

Sincerely,

David Miller, Ph.D., Secretary
Board of Trustees